No. 11,925

United States Circuit Court of Appeals

For the Ninth Circuit

MATSON NAVIGATION COMPANY, a corporation,
Appellant,

vs.

WAR DAMAGE CORPORATION, a corporation,
Appellee.

Appellant's Opening Brief

HERMAN PHLEGER,
GREGORY A. HARRISON,
BAILEY LANG,
111 Sutter Street,
San Francisco 4, Calif.,

LYMAN HENRY,
KENT SAWYER,
Balfour Building,
San Francisco 4, Calif.,

Attorneys for Appellant.

BROBECK, PHLEGER & HARRISON,
111 Sutter Street,
San Francisco 4, Calif.,

HALL, HENRY & OLIVER,
Balfour Building,
San Francisco 4, Calif.,

Of Counsel.

PARKER PRINTING COMPANY, 180 FIRST STREET, SAN FRANCISCO

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No. 11925

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MATSON NAVIGATION COMPANY, a corporation,
Appellant,

vs.

WAR DAMAGE CORPORATION, a corporation,
Appellee.

Appellant's Opening Brief

The single issue in this suit is whether Section 5g of the Reconstruction Finance Corporation Act, providing protection to the public against loss or damage from enemy attack, excluded from its benefits a vessel which was lost December 12, 1941 on a voyage from Hawaii to the United States.

A. STATEMENT REGARDING JURISDICTION

Appellant, Matson Navigation Company (hereinafter referred to as "plaintiff"), takes this appeal from a judgment of the United States District Court for the Northern District of California, dismissing its complaint against Appellee, War Damage Corporation (hereinafter referred to as "defendant").

Plaintiff filed suit against defendant on March 22, 1945, seeking to recover compensation for the loss of its steamship, the Lahaina, under the provisions of Section 5g of the Reconstruction Finance Corporation Act as added March 27, 1942 (15 U.S.C. 606b-2; 56 Stat. 175, Sec. 5g).

Defendant is a corporation formed under Section 5d of the Reconstruction Finance Corporation Act, and charged with administration of the War Damage Law. Under Article Third of its charter and under Section 4 of the Reconstruction Finance Corporation Act, it has the power to sue and can be sued in any court of competent jurisdiction (15 U.S.C.A. Section 604). The District Court is such a tribunal under 28 U.S.C.A. Sections 41(1) and 42.

The amount in controversy, exclusive of interest and costs, exceeds $3,000 (6, 13, 83).[1] The pleadings, showing the jurisdiction of the District Court, are set forth in the complaint (2-6).

The Circuit Court of Appeals for the Ninth Circuit has jurisdiction of this appeal under 28 U.S.C.A. Section 225 (a) (d).

On February 10, 1948, within ninety days after the first of the several orders[2] which might have constituted a final decision for defendant, plaintiff filed a Notice of Appeal (87).

Plaintiff filed a designation of the contents of the Record on Appeal on February 16, 1948 (88). On May 7, 1948, the Transcript of Record on Appeal was certified by the Clerk of the

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1. References to the Transcript of Record on Appeal are indicated simply by reference to the page number as follows: "(....)."

2. In view of the uncertainties as to which of the several orders and findings made by the trial court constituted a final decision (cf. *Hoiness v. United States* (9th Cir.) 165 F.2d 504), plaintiff has appealed from all of them; namely, the formal judgment entered December 19, 1947 (85), together with whatever judgment for defendant might have been embodied in the Findings and order for filing same entered December 12, 1947 (81), the trial court's opinion dated November 17, 1947 (64), and the order directing entry of judgment for defendant filed November 17, 1947 (80).

District Court (92) and filed on the same day with the Clerk of this Court (376).

On May 7, 1948, plaintiff filed a designation of points to be relied upon in this appeal (377), and on May 12, 1948, a stipulation was filed designating the portion of the record to be included in the printed Record on Appeal (379).

B. STATEMENT OF THE CASE

One of the plaintiff's steamships, the Lahaina, left her last Hawaiian port on December 4, 1941, bound for a port in the continental United States. Her departure was three days before Pearl Harbor, at a time when there was no apprehension of war or warlike operations in the waters lying between Hawaii and the mainland. Indeed, what occurred on December 7th reveals that not even high military or naval authorities anticipated what transpired on that day. It is only natural then that the Lahaina did not have the benefit of war risk insurance; for there was nothing to indicate to prudent management the need for it.

On December 11, 1941, the Lahaina was attacked on the high seas by a Japanese submarine. After prolonged shelling, the crew successfully abandoned the ship by the only remaining life boat; they stood by until the Japanese craft departed and were able to return aboard ship removing some emergency equipment and supplies. They stood by until the ship sank and, after a hazardous trip in the open life boat, they arrived at the island of Maui.

It was stipulated that the fair cash market value of the Lahaina at the time of her sinking was $615,000 (60) and that plaintiff had no war risk insurance of any kind covering her loss beyond that subsequently made available by Section 5g of the Reconstruction Finance Corporation Act (61).

At the time the Lahaina was sunk the United States had not yet made available any form of protection against loss from

enemy action. The Maritime Commission had been *authorized* to provide marine war risk insurance by the Merchant Marine Act of 1936 (Act of June 29, 1936, Ch. 858, Title II, as amended by Act of June 29, 1940, Ch. 447, 54 Stat. 690; 46 U.S.C.A. Sec. 1128a). It was not until a later date that the Maritime Commission commenced to exercise the powers given it.[3]

This situation did not long remain unremedied. Responding to a wide-spread public alarm and a sense of moral obligation toward unfortunate individuals who might suffer loss by the acts of the common enemy, Mr. Jesse Jones, the Federal Loan Administrator, with the President's approval, announced on December 13, 1941, that the defendant (then called "War Insurance Corporation") had been created to provide free protection against property losses thereafter occurring in the continental United States. Certain types of property, i.e., objects of art and intangibles, were excluded (4, 9). On December 22, 1941, another public announcement extended this coverage to property in certain territories (4, 9).

Up to this point, plaintiff had no claim for the loss of the Lahaina, because (1) the loss occurred December 12th, which was before the effective date of the coverage, December 13th, and (2) it occurred neither in the continental United States nor in a territory.

The protection provided by executive action was a temporary expedient. In January 1942 bills were introduced both in the House and Senate to put the matter of war damage protection on a firmer basis. We shall not pause here to follow the bills through the legislative process. For the present it is sufficient to point out that on March 27, 1942, the President approved a law adding Section 5g to the Reconstruction Finance Corpora-

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3. Mr. Hamilton testified on January 27, 1942 that the Maritime Commission then had been writing war risk insurance both on cargoes and ships for about a month (Sen. Com. Hearings, p. 98).

tion Act (Act of March 27, 1942, Ch. 198, Sec. 2; 56 Stat. 175; 15 U.S.C.A. Sec. 606 b-2). The full text is set forth in Appendix A.

The statute did two things: *First,* it provided *for the future* (to go into effect not later than July 1, 1942) an insurance program against war damage, calling for the issuance of policies and the payment of premiums, to be administered by defendant; *Second,* it granted free protection for losses incurred between December 6, 1941, and the effective date of the paid insurance system.

The question on this appeal is whether vessels en route between Hawaii and the continental United States were excluded from free coverage granted by this statute.

Clearly, such a loss was covered by the broad language in which Congress granted defendant authority to use its funds:

> "* * * to provide, through insurance, reinsurance, or otherwise, reasonable protection against loss of or damage to *property, real and personal,* which may result from enemy attack * * *"[4]

The unlimited scope of that language was narrowed by other provisions:

> "Such protection shall be applicable only (1) to such property situated in the United States * * * the Territories * * * of the United States * * * (2) to *such property in transit* between any points located in any of the foregoing, * * *"

This appeal turns on the question of whether the Lahaina on the high seas en route between a territory and the United States, falls within the meaning of "such property in transit."

The language quoted above is, in part, that which directed defendant to set up an insurance plan for the future. It is equally applicable to the free coverage period because the part

4. Emphasis throughout this brief is ours unless otherwise indicated.

of the statute providing for free protection does not separately define the property covered.

On December 29, 1944, plaintiff presented its claim to defendant for the loss of the Lahaina (83). By a letter dated January 19, 1945, defendant rejected the claim, stating in explanation that it did not interpret the statute as intended to cover vessels and therefore, with the approval of the Secretary of Commerce, had excluded most types of watercraft (5-7, 12-13).

Plaintiff filed suit on March 22, 1945 (2). Defendant answered and, by paragraph II, denied that the Lahaina was "in transit" within the meaning of the statute (7-8), i.e., denied that a vessel en route from Hawaii to the United States was within the protection granted by the statute.

The court below sustained this defense and gave judgment for defendant from which this appeal has been taken.

Defendant also pleaded a host of affirmative defenses ranging from No. 1 (that the complaint did not state a cause of action) to No. 10 (that plaintiff had not filed a timely claim). All of these were ignored by the court below, both in the opinion (64) and the Findings of Fact and Conclusions of Law (81). Since the judgment rested solely on the interpretation of the statute, we shall devote our argument primarily to that matter.

C. SPECIFICATIONS OF ERROR

Plaintiff contends:

1. The District Court erred in concluding that Section 5g of the Reconstruction Finance Corporation Act, as amended on March 27, 1942, did not afford protection to seagoing ships.

2. The District Court erred in making what purports to be a "finding of fact"; namely, that the Lahaina was not on December 12, 1941, or at any other time, "property in transit" between a port in the Hawaiian Islands and a port in the continental United States within the meaning of Section 5g of the

Reconstruction Finance Corporation Act, as amended by the Act of March 27, 1942, and that its loss was therefore not compensable under that law.

3. The District Court erred in failing to conclude that plaintiff was entitled to recover judgment from defendant in the principal sum of $615,000.00 in accordance with its finding that the reasonable value of the Lahaina at the time of her loss was $615,000.00.

DISCUSSION

I. Preliminary Analysis

Plaintiff's contentions about the proper interpretation of this statute can be summarized very briefly:

1. The plain meaning of the statute, specifically the language "such property in transit," includes a vessel en route between Hawaii and the United States.

2. The plain meaning promotes the purpose of the Act and is consistent with its policy. In these circumstances it is improper to engage in a fishing expedition into legislative materials in the hope of capturing some vagrant remark to cast doubt upon otherwise evident conclusions.

3. The legislative history of the statute, i.e., the detailed consideration of what was said and done about specific language and provisions, is entirely consistent with the plain meaning revealed on the face of the statute.

4. Any other interpretation would create inequalities and discriminations foreign to the major purpose of the statute and to the sense of moral justice upon which it rests.

II. The Loss of the Lahaina Falls Within the Plain Meaning of the Statute

In this section we deal only with the meaning of the statute as derived from the language used. It is doubtless true that in appropriate circumstances a court may look beyond the face of

the statute. But the rule remains that in the absence of some contrary indication it must be assumed that Congress intended to convey the ordinary meaning which is attached to the language used. *Jones v. Liberty Glass Company,* 332 U.S. 524, 92 L.Ed. Adv. Op. 195, 68 S.Ct. 229.

As the court said in *Browder v. United States,* 312 U.S. 335, 85 L.Ed. 862, 61 S.Ct. 599: "The plain meaning of the words of the Act covers this use. No single argument has more weight in statutory interpretation than this." (p. 338).

Giving the words of this statute their ordinary meaning, we submit that the loss of the Lahaina unmistakably fell within the coverage of the statute.

Congress authorized defendant to provide protection against loss of property by enemy attack in the broadest terms imaginable:

> "The Reconstruction Finance Corporation is authorized to and shall empower the War Damage Corporation to use its funds to provide, through insurance, reinsurance, or otherwise, reasonable protection against loss of or damage to *property, real and personal,* which may result from enemy attack (including any action taken by the military, naval, or air forces of the United States in resisting enemy attack), with such general exceptions as the War Damage Corporation, with the approval of the Secretary of Commerce, may deem advisable."

Whatever power defendant may have had to make exceptions is not involved in the immediate problem.[5] We are here concerned only with the question of whether Congress intended to exclude vessels en route from Hawaii to the United States from the protection of the statute.

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5. Defendant contended on the trial that it could and did except, from the free protection, losses of the character involved in this suit; that contention was disregarded by the trial court and is, we believe, without substance. If raised again in this court, it will be answered in plaintiff's reply brief.

We are unable to think of any words by which Congress could have conveyed more clearly an intent to cover every conceivable species of property. It will not be disputed, we assume, that the steamship Lahaina was personal property.

The immediately ensuing provisions of the statute directed defendant to make this protection available not later than July 1, 1942 and to establish uniform rates.

The scope of protection granted by the statute was further defined by the following limitations:

> "Such protection shall be applicable only (1) *to such property situated in the United States* (including the several States and the District of Columbia), the Philippine Islands, the Canal Zone, the Territories and possessions of the United States, and in such other places as may be determined by the President to be under the dominion and control of the United States, (2) *to such property in transit between any points located in any of the foregoing* * * *"

It is simply indisputable that the reference in clause (1) to "such property" refers back to the words "property, real or personal" appearing in the provision first quoted. The limitation, then, does not narrow the kind of property protected but merely confines the protection to a geographical area. The Lahaina, anchored in San Francisco Bay, would have been within the protection of the statute along with every species of property in the United States and the other designated areas.[6]

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6. One of the District Court's conclusions of law was that the statute did not afford protection to *"seagoing ships."* From such statement it might be considered that the Lahaina would not have been covered even within the continental United States. We see no basis for such view and we shall give no further attention to it unless defendant argues the point in the reply.

It is equally clear that the reference in clause (2) to "such property" refers back to the same words as the identical language in clause (1). To put it briefly, clause (1) covers *every* species of property while *situated* in designated geographical areas. Clause (2) covers *every* species of property while in *transit* between any of those areas.

So far as the plain meaning of words is concerned, the Lahaina, en route from Hawaii to the United States, falls within the coverage of clause (2) as constituting "such property in transit between any points located in any of the foregoing."

A special proviso applied to clause (2):

> "PROVIDED, That such protection shall not be applicable after the date determined by the Secretary of Commerce under this subsection to property in transit upon which the United States Maritime Commission is authorized to provide marine war-risk insurance."

The effect of this provision was simply to exclude from the insurance program *to be set up for the future* any property in transit upon which the Maritime Commission was authorized to provide war risk insurance. The necessary implication is that during the period December 6, 1941 to the date upon which the new program was to be put in effect, property in transit was within the protection of the statute regardless of whether the Maritime Commission was authorized to provide war risk insurance or not. This proviso serves to remove any doubt about the status of the Lahaina. Since the Maritime Commission was authorized to provide war risk insurance, neither a vessel in transit nor her cargo would be covered under the plan to be established. But up to that time both the vessel and her cargo were protected.

The language quoted and discussed above all has reference to the scope of the protection to be afforded *as to the future* under the protection which the defendant was directed to establish. Congress also granted free coverage, without the formalities

of any insurance policy, for loss or damage occurring between December 6, 1941 and the effective date of the insurance plan. The kind of property covered and its location were not separately stated. Instead, the statute refers back to the foregoing provisions by use of the familiar "such property":

> "(b) Subject to the authorizations and limitations prescribed in subsection (a), any loss or damage to any such property sustained subsequent to December 6, 1941, and prior to the date determined by the Secretary of Commerce under subsection (a), may be compensated by the War Damage Corporation without requiring a contract of insurance or the payment of premium or other charge, and such loss or damage may be adjusted as if a policy covering such property was in fact in force at the time of such loss or damage."

It is perfectly clear, we submit, that the quoted language simply granted automatic coverage, for the period prior to establishment of the paid plan of protection, to every kind of property within the protected areas or in transit between them.[7] Indeed, the coverage was broader, for the proviso excluding property in transit which the Maritime Commission was authorized to insure was applicable *only* to the future period.

In summary, we submit that if ordinary language is capable of expressing intent, it is evident that Congress intended to authorize protection for every conceivable sort of property subject only to geographical limitations. Certainly nothing suggests an intent to exclude any particular kind of property or to limit the recurrent use of the phrase "such property" to anything less than the full significance of the categorical "property, real and personal."

The loss of the Lahaina was covered by the plain language of the statute.

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7. Defendant contended in the trial court that the free protection provision of the statute was merely permissive and conferred no rights on plaintiff. This contention also was disregarded by the trial court and will be more fully answered in the reply brief if raised again in this appeal.

A. DEFENDANT'S CONTENTION THAT THE PHRASE "PROPERTY IN TRANSIT" HAS A SPECIAL USAGE WHICH EXCLUDES VESSELS.

In the District Court defendant argued that the language appearing in Clause (2) "such property in transit between any points located in any of the foregoing" did not mean what it seems to, i.e., property which is "en route" as distinguished from property which is "situated," and therefore within the coverage of Clause (1). Defendant's argument was that the words "in transit" are a term of art used in the marine insurance trade with respect to cargoes and not used with respect to vessels. From this premise defendant urged the conclusion that even though a vessel would otherwise be included within the phrase "such property," the use of the words "in transit" indicated that the ordinary meaning of "property" was intended to be narrowed to the sort of property with respect to which this language ordinarily is used in marine insurance policies, namely, cargoes.

1. Technical Usage in the Marine Insurance Trade Is Not Applicable to This Statute.

Defendant relied upon the well-known rule that when a term having a precise and definite meaning in a particular trade is used in a statute dealing with that trade, ordinarily it should be accorded the technical meaning which it has in that trade. We have no dispute with the general rule. Defendant's argument, however, ignores the fact that this statute is not a marine insurance law but rather a general measure applicable to every sort of property, most of it on land.

The marine coverage involved in this statute was an exceedingly small part of the total. Even the "in transit" provisions extend beyond maritime transportation to include rail, air and truck transport.

Defendant sought to connect the statute more closely with insurance by pointing out that before the bill was originally proposed by Mr. Jesse Jones, the Federal Loan Administrator, he

consulted with insurance executives (Senate Committee Hearings, p. 7). The argument ignores the fact that at the time the bill was introduced it did not even purport to cover property in transit but was confined solely to property located in specified geographical areas. The extension of coverage to property in transit came with the Clark amendment following representations by the delegates from Hawaii and Alaska regarding the need for extension of the coverage.

Defendant's argument that the scope of the language "property in transit" should be measured by the technical meaning used in the insurance trade we think is unsound. In the recent case of *Hartford Accident & Indemnity Co. v. Wolbarst* (N.H.) 57 A.2d 151, it was contended that the reference to injuries "accidentally sustained" in a compulsory automobile insurance statute must be construed to exclude an injury caused by a deliberate bumping. The court rejected that argument, saying (p. 153): "The meaning expressly or impliedly given to the word in private policies or contracts independently of statutory requirements is not controlling. The point of view is different." The reasoning involved in this case we think is equally applicable here. Congress was not writing an insurance policy and certainly was not writing a marine insurance policy. The scope of coverage must be determined from the ordinary meaning of the words employed considered in the light of the policy and the purposes of the statute.

2. No Special Usage in the Marine Insurance Trade Which Would Exclude Vessels Was Established.

Defendant sought to establish the point about the special meaning to be attributed to the words "in transit" through the testimony of a number of insurance experts. The District Judge made no finding with respect to the existence of such a special usage in the marine insurance trade (82-84) and in the opinion the court dismissed the evidence on this point as of "little, if any, value" (p. 66).

The fact is that the expert testimony offered did not actually touch upon the real problem. The gist of the testimony was that the term "in transit" ordinarily is used in insurance policies covering cargo and that use of such a word in connection with insurance of the vessel was unusual. The testimony is beside the point. The fact is that cargo customarily is insured on a point-to-point basis, i.e., during the movement. Before and after the movement cargo is subject to a different sort of risk and a marine policy would be inappropriate beyond the duration of the voyage. The vessel, on the other hand, is not customarily insured merely for the transit.[8]

The use of the words "in transit" in connection with cargo thus is entirely consistent with the idea that such words are used to cover the subject of insurance during the period while it is in motion. Such words would be equally appropriate to covering the vessel as well as the cargo, inasmuch as both the vessel and the cargo while in the Continental United States or any of the designated territories would be covered by Clause (a). Clause (b) was intended to and did cover the movement of such property between any of those points.

Nothing in the ordinary use of the words "in transit" suggests that the word "property" must exclude vessels. It is common usage to describe vessels as being in transit.

In *Farwell, Rules of the Nautical Road,* 1944 Ed. p. 380, the following appears dealing with rules governing navigation of the Panama Canal:

> "Rule 54. Authorized Speed of Transit: The following speeds shall not be exceeded by vessels *in transit* through the canal: * * *"

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8. Testimony introduced on behalf of defendant explained the customary use of the term "in transit" in cargo policies and its absence in hull policies as follows: "the term 'in transit' is appropriate for cargo policies because it aptly described the period of movement between fixed points as is customary in insuring cargoes; whereas vessels are insured customarily either for a specified interval of time or by voyage, in which event the vessel is insured in port as well as at sea." (134, 135)

And in *Benedict on Admiralty,* Volume 2, p. 353, the author uses the word "transit" to describe the movement of a vessel in the following language:

> "In the case of the Melmay, the vessel was about to *transit* the Panama Canal * * *"

The dictionary definitions are in accord. *Black's Law Dictionary* (Delux Third Ed. 1944) gives the following meanings:

> "In Transitu. In transit; on the way or passage; while passing from one person or place to another. 2 Kent Comm. 540-542; *More v. Lott,* 13 Nev. 383; *Amory Mfg. Co. v. Gulf, etc. R. Co.,* 89 Tex. 419, 37 S.W. 856, 59 Am. St. Rep. 65. *On the voyage,* 1 C. Rob. Adm. 338."

Webster's New International Dictionary (2d ed., 1944) cites as an example of the word "transit" "A ferry makes ten transits a day." It also defines the noun as meaning "the action or an instance of passing or journeying across," and the verb "transit" is said to mean "to make a transit across or over; as to transit the Panama Canal."

We quote as follows from the Oxford Dictionary definition of the word "voyage":

> "e. spec. In marine insurance: (see quot.). 1848, Arnould, Marine Insur. L XII, I, 333. The voyage insured * * *, a technical term, which must be clearly distinguished from the actual voyage of the ship * * * is a *transit* at sea from the *terminus a quo* to the *terminus ad quem* in a prescribed course of navigation * * * which is never set out in the policy." (Vol. X, Part II, 1928 Ed.)"

The usage is similar in judicial opinions. In *Bush v. State ex rel. Dade County* (1939) 140 Fla. 277, 191 So. 515, 523, the Supreme Court of Florida said:

> "It is the unquestioned law that where a *vessel* is engaged in the actual carrying commerce between a port of one state and a port or ports of another or foreign ports, as

to each of the ports so visited, by her *she* is considered as being *in transit*, * * *"

In *Hays v. Pacific Mail Steamship Co.* (1854), 17 How. (U.S.) 596, 600, 15 L.Ed. 254, the court uses the Latin equivalent of "in transit" to distinguish the activities of vessels having no situs:

> "I concur in the judgment. But I concur only in consequence of the facts stated in the declaration, and which are admitted by the demurrer. The material fact is, that the *vessels* were *in transitu*, having no *situs* in California, nor permanent connections with its internal commerce."

The use of the word "transit" in connection with vessels is also common in many maritime labor contracts as illustrated by plaintiff's Exhibit No. 1 (375) which was introduced with the stipulation (114) that it was typical of the usage in many other labor contracts.

To the above noted cases and definitions may be added the weight of Arnould on Marine Insurance and Average (Twelfth Edition, 1939) who states (pp. 532, 533):

> "The voyage insured (*viaggium*) is a *transit at sea* from the *terminus a quo* to the *terminus ad quem* in a prescribed course of navigation (*iter viaggii*), which is never set out in any policy, but virtually forms part of all policies, and is as binding on the parties thereto as though it were minutely detailed."

3. Defendant's Own Contentions Show That the Phrase "in Transit" Was Not Used with the Technical Meaning Which It Claims to Have Existed in the Marine Insurance Trade.

The special meaning in the marine insurance trade argued for by the defendant was that the phrase "property in transit" should be understood to refer to cargo. It would be a reasonable question to inquire why the statute did not employ the familiar word "cargo" if that was the intent. Defendant had a ready

explanation for this in the District Court. The reason, it suggested, was that it was intended to cover baggage and personal effects and any other things that might be carried by ships or planes, and that the term "property" *deliberately* was chosen *because it was broader* and appropriate to embrace these additional kinds of property.

By this explanation we think defendant abandoned its argument with respect to the restricted interpretation of the words "property in transit." Obviously it means something more than the restricted meaning which defendant claims should be given to such language in the marine insurance trade. If it means more than cargo, we fail to see the slightest basis for contending that the line of demarcation is to be made at ships.

That it does mean more than cargo we think is evident from the ordinary meaning of the word, from defendant's own explanation of the statute, and from the legislative history of the in transit provision which will be discussed below. It means, we submit, simply that any property which would be covered while situated in the Continental United States or in the Territories would also be covered while in transit between those points.

B. THE MEANING AND INTENT OF THE STATUTE IS PLAIN. THERE IS NO OCCASION TO RESORT TO LEGISLATIVE HISTORY.

We think that the ordinary meaning of the words used in this statute is plain and that Congress intended to cover property of every kind situated in the United States, in the Territories, or in transit between those points. The loss of the Lahaina is therefore within the plain language and intent of the statute. There is no occasion in this case for resort to extrinsic aids of construction such as the legislative history of the statute.

1. Legislative Materials Are Resorted to Only When the Statute Is Ambiguous.

We are aware that language has been used in some of the cases suggesting that there is no rule of law by which legisla-

tive materials can ever be deemed irrelevant. See *Harrison v. Northern Trust Company,* 317 U.S. 476, 87 L.Ed. 407, 63 S.Ct. 361.

We do not understand such language to mean that the words used in a statute have no definite meaning. If the statute says white, we do not suppose that any court would even suggest that the statute might be construed to mean black, no matter how clearly the legislative materials might suggest such an intent.

When the meaning of the language plainly includes a particular application of the statute, the courts do not exclude it merely because there may be evidence that Congress had not contemplated that particular situation. In such a case the legislative materials suggesting an intent contrary to the ordinary meaning of the statute are irrelevant for the simple reason that they could not be effective to change the meaning of the statute.

This long settled rule was reaffirmed in the recent case of *Packard Company v. Labor Board,* 330 U.S. 485, 91 L.Ed. 1040, 67 S.Ct. 789. In that case it was argued that supervisory employees, although falling within the ordinary meaning of the word "employees," were not intended to be given the right to organize unions and bargain collectively as were other employees. The court rejected that argument:

> "We are invited to make a lengthy examination of views expressed in Congress while this and later legislation was pending to show that exclusion of foremen was intended. There is, however, no ambiguity in this Act to be clarified by resort to legislative history, either of the Act itself or of subsequent legislative proposals which failed to become law." (p. 492)

And in *Helvering v. City Bank Co.,* 296 U.S. 85, 80 L.Ed. 62, 56 S.Ct. 70, the court said:

> "We are not at liberty to construe language so plain as to need no construction, or to refer to Committee reports where there can be no doubt of the meaning of the words used." (p. 89)

In *Barr v. United States,* 324 U.S. 83, 89 L.Ed. 765, 65 S.Ct. 522, it was said:

> "But if Congress has made a choice of language which fairly brings a given situation within a statute, it is unimportant that the particular application may not have been contemplated by the legislators. *Puerto Rico v. Shell Co.,* 302 U.S. 253, 257; *Browder v. United States,* 312 U.S. 335, 339, and cases cited." (p. 90)

In *United States v. Missouri Pacific Railroad Company,* 278 U.S. 269, 73 L.Ed. 322, 49 S.Ct. 133, the court said:

> "The language of that provision is so clear and its meaning so plain that no difficulty attends its construction in this case. Adherence to its terms leads to nothing impossible or plainly unreasonable. We are therefore bound by the words employed and are not at liberty to conjure up conditions to raise doubts in order that resort may be had to construction. It is elementary that where no ambiguity exists there is no room for construction." (p. 277)

See also *Van Camp & Sons Company v. American Can Company,* 278 U.S. 245 at 253, 73 L.Ed. 311, 49 S.Ct. 112.

The only exception to the rule is that when the literal meaning of the language is plainly unreasonable or leads to an absurdity contrary to the spirit of the statute, the courts may treat the language as though it was ambiguous and resort to legislative material to determine whether the irrational result was intended.

The rule was well stated in *Crooks v. Harrelson,* 282 U.S. 55, 75 L.Ed. 156, 51 S.Ct. 49:

> "It is urged, however, that if the literal meaning of the statute be as indicated above, that meaning should be rejected as leading to absurd results, and a construction adopted in harmony with what is thought to be the spirit and purpose of the act in order to give effect to the intent of Congress. The principle sought to be applied is that followed by this Court in Church of the Holy Trinity v.

United States, 143 U.S. 457, 36 L.Ed. 226, 12 S.Ct. 511; but a consideration of what is there said will disclose that the principle is to be applied to override the literal terms of a statute only under rare and exceptional circumstances. The illustrative cases cited in the opinion demonstrate that to *justify a departure from the letter of the law upon that ground, the adsurdity must be so gross as to shock the general moral or common sense.* Compare Pirie v. Chicago Title & T. Co., 182 U.S. 438, 451, 452, 45 L.ed. 1171, 1178, 1179, 21 S.Ct. 906. And there must be something to make plain the intent of Congress that the letter of the statute is not to prevail. Treat v. White, 181 U.S. 264, 268, 45 L.ed. 853, 854, 21 S.Ct. 611." (pp. 59, 60)

And see *Caminetti v. United States,* 242 U.S. 470, 61 L.Ed. 442, 37 S.Ct. 192; *United States v. Missouri Pacific R. Co.,* supra at 277. Recent cases announcing a liberal rule with respect to use of legislative materials have not modified this limitation upon their *effect.* Thus in *United States v. American Trucking Associations,* 310 U.S. 534, 84 L.Ed. 1345, 60 S.Ct. 1059, the court said:

> "There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning. When that meaning has led to absurd or futile results, however, this Court has looked beyond the words to the purpose of the act. Frequently, however, even when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words." (p. 543)

The plain meaning of the statute in this case leads to no injustice or absurdity. We shall point out in a later section of

this brief that the plain meaning accurately reflects the broad policy and purposes of the statute. Indeed, the contentions made by defendant, if accepted, would lead to discriminations and inequalities without any rational basis.

2. Extrinsic Aids to Interpretation Are Resorted to in Order to Remove Doubts, Not to Create Them.

The defendant attempted in the court below to derive comfort from isolated remarks at Committee hearings or in debate even before the legislation took its final form to raise doubts and then explain them to defendant's purpose. The court stated in *Gemsco, Inc. v. Walling,* 324 U.S. 244, 89 L.Ed. 921; 65 S.Ct. 605:

> "The plain words and meaning of a statute cannot be overcome by a legislative history which, through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction." (p. 260)

And see *United States v. Dickerson,* 310 U.S. 554, 84 L.Ed. 1356, 60 S.Ct. 1034.

Aids to construction have always been recognized as means to resolve ambiguity and not to create it. In *United States v. California,* 297 U.S. 175, 80 L.Ed. 567, 56 S.Ct. 421, it was argued that a sovereign is presumptively not to be bound by statute. But the court thought the statute broad enough and rejected the argument, saying at page 186:

> "Language and objectives so plain are not to be thwarted by resort to a rule of construction whose purpose is but to resolve doubts, and whose application in the circumstances would be highly artificial."

And see *United States v. Rice,* 327 U.S. 742, 90 L.Ed. 982, 66 S.Ct. 835:

> "Statutory language and objective, thus appearing with reasonable clarity, are not to be overcome by resort to a

mechanical rule of construction, whose function is not to create doubts, but to resolve them when the real issue or statutory purpose is otherwise obscure." (pp. 752-3)

If legislative materials are to be used for the interpretation of the statute, we submit that they should be used, as they always have, as a source from which to determine the purpose and policy which the statute seeks to achieve. See *Radin, Statutory Interpretation,* 33 Cal. Law Rev. 219 at 224.

III. History of the Statute

A. LEGISLATIVE HISTORY IS MORE TRUSTWORTHY AS A GUIDE TO THE GENERAL POLICY OF A STATUTE THAN TO THE DETAILED INTERPRETATION OF SPECIFIC PROVISIONS.

In the normal course of events it is reasonable to anticipate that members of Congress will be familiar with the main purpurposes of legislation before them. It is a matter of common knowledge that, in the ordinary case, there is no such familiarity with the details.

Courts have long recognized this realistic distinction. Thus, even when legislative debates were deemed improper as aids to construction of *specific* matters, they were considered in ascertaining the *general purpose* of the law and the conditions which it was intended to remedy. *Standard Oil Co. v. United States,* 221 U.S. 1, 55 L.Ed. 619, 31 S.Ct. 502; *Humphrey v. United States,* 295 U.S. 602, 79 L.Ed. 1611, 55 S.Ct. 869; *Federal Trade Com. v. Raladom Co.,* 283 U.S. 643, 75 L.Ed. 1324, 51 S.Ct. 587.

The general purpose of a statute may be a determining factor in interpretation. *United States v. C. I. O.,* ..... U.S. ....., 92 L.Ed. Adv. Ops. 1315, 1320, ... S.Ct. ..... As the court said in *S. E. C. v. Joiner Corp.,* 320 U.S. 344, 350-351, 88 L.Ed. 88, 64 S.Ct. 120, other rules for deciphering the legislative intent have

"long been subordinated to the doctrine that courts will construe the details of an act in conformity with its dominating general purpose, will read text in the light of context and will interpret the text so far as the meaning of the words fairly permits so as to carry out in particular cases the generally expressed legislative policy." (pp. 350-351)

And see *Apex Hosiery v. Leader,* 310 U.S. 469, 84 L.Ed. 1311, 60 S.Ct. 982, and *Nardone v. United States,* 308 U.S. 338, 84 L.Ed. 307, 60 S.Ct. 266.

B. THE CIRCUMSTANCES IN WHICH THE STATUTE WAS ENACTED DISCLOSE THAT ITS PURPOSE WAS TO ESTABLISH A BROAD PROGRAM OF WAR RISK PROTECTION FOR THE PUBLIC AT THE PUBLIC EXPENSE.

We shall consider here the circumstances and motives which led to the first attempt to give protection against war damage.

Courts have long recognized that an understanding of the conditions at the time a statute was enacted furnishes a valuable guide to the legislative intent; for the problems which give rise to a law point to its general purpose and policy. *Smith v. Townsend,* 148 U.S. 490, 496, 37 L.Ed. 533, 13 S.Ct. 634; *Church of the Holy Trinity v. United States,* 143 U.S. 457, 36 L.Ed. 226, 12 S.Ct. 511; *Apex Hosiery Co. v. Leader,* supra; 2 *Sutherland, Statutory Construction* (3rd ed., 1943), Para. 5002.

As the court said in *United States v. C. I. O.,* ..... U.S. ....., 92 L.Ed. Adv. Ops. 1315, ... S.Ct. .....:

"There is no better key to a difficult problem of statutory construction than the law from which the challenged statute emerged." (L.Ed. at 1320)

This Court may take judicial notice of the emergency with which the country was confronted when, on December 7, 1941, it was plunged suddenly into war by the attack on Pearl Harbor. There was widespread fear of further attack at any moment, particularly along the Atlantic and Pacific Coast areas. Public morale and the orderly prosecution of the war effort were

thought to be adversely affected by concern over the prospects of uncompensated property damage (Senate Report No. 1012 (on S. 2198), 77th Cong. 2d Sess.).

Recognizing the need for some immediate relief, the Federal Loan Administrator, Jesse H. Jones, publicly announced, on December 13, 1941, that reasonable financial protection would thereafter be afforded to property owners in the United States against enemy attack without charge or premium. By a similar statement, made on December 22, 1941, that protection was extended to property owners in Alaska, Hawaii, Philippine Islands, Puerto Rico and the Virgin Islands. That protection was to be furnished through a corporation known at first as War Insurance Corporation but later as War Damage Corporation, the defendant in this action.

Mr. Jones later explained to Congress that he considered the press releases to constitute blanket insurance policies (Sen. Com. Hearings, pp. 6-7) and that "Everybody now is reasonably covered by the $100,000,000 provided" (Sen. Com. Hearings, p. 8; House Com. Hearings, p. 26).

It is apparent that the scheme of protection set up by the press releases was a temporary expedient. In January 1942 bills were introduced in Congress, sponsored by the Administration through Mr. Jones, to put the whole matter on a firm basis.

In the light of certain contentions made by defendant in the District Court, it is necessary to examine the scope of protection afforded under these press releases in some detail.

1. Vessels Were Included in the Original Insurance Program Published in the Press Releases.

In the District Court defendant argued that the press releases were not intended to apply to vessels. From this ill-founded premise defendant spun out a web of argument that the statute later enacted was a direct outgrowth of the press releases and, therefore, it too was not intended to apply to vessels.

The press release announced that defendant had been created

> "to provide reasonable protection against losses resulting from enemy attacks which may be sustained by owners of property in continental United States through damage to or destruction of buildings, structures and personal property, including goods, growing crops and orchards. Pending completion of details, any such losses will be protected from December 13, 1941, up to a total of $100,000,000. Accounts, bills, currency, debts, evidences of debt, money, notes, securities, paintings and other objects of art will not be covered. For the time being no premium will be charged for this protection, and no declaration or reports required unless there is a loss." (Sen. Com. Hearings, p. 6)

Defendant's contention that the press release did not cover vessels, even assuming them to be in the United States, rested upon two equally startling arguments.

The first seeks to apply the maxim *ejusdem generis* to the language "buildings, structures and personal property including goods, growing crops and orchards." "Personal property," it was claimed, was restricted in meaning by the preceding words "buildings, structures," so that it meant personal property of the type "associated with buildings and structures." Apparently troubled by the express inclusion of crops and orchards, defendant suggested the true meaning to be "personal property of the type usually found on land."

We doubt that the time-honored rule of construction *ejusdem generis,* has ever before been tortured into anything like this. As we understand the rule of construction it applies only to a situation where a series of related specific items are set forth followed by general language which *includes the specific items* as well as others. In such case the general language may, in the absence of other indications of intent, be interpreted to apply only to items like those specifically set forth. 2 *Sutherland, Statutory Construction,* 3rd Ed. 1943, §4909.

The obvious fallacy of defendant's argument lies in attempting to apply the rule to general language which includes none of the specific items. "Personal property" is not a generic term including *realty*. It also ignores the specific exception of objects of art and intangibles, which certainly would be unnecessary if defendant's argument were correct. This contention of defendant would make the press releases, intended to "allay fear," a cynical fraud on the public.

The second argument is that vessels were not covered because Mr. Jones (when he made the announcement) was not concerned with ships. This theory about what Mr. Jones had in mind rests upon his own later assertion (Sen. Com. Hearings, p. 6) that the press release was called forth because of the widespread fear of bombing, particularly along the West Coast and the Atlantic seaboard. Obviously the argument proves too much. By that criterion of interpretation, the only property covered would have been along the coast and it would have been covered against bombing only. No one has even suggested that the protection was so restricted and the argument plainly is without merit.

2. Scope of Protection Available Under the Press Releases at the Time Congress Commenced Work on the Proposed Law.

The coverage available under the press releases throws light upon the meaning of the statute. We think it is evident that vessels are personal property within the meaning of the press release and that they do not fall within the exceptions made with respect to intangibles and objects of art. It follows, then, that a vessel situated in the United States, e.g., in San Francisco Bay, or in the designated Territories was within the protection afforded by the press release.

The press releases did not protect the Lahaina because: (1) She was lost prior to the effective date of coverage, and (2) she was neither in the United States nor in a territory.

The situation as it stood when Congress took up the new

legislation was this: A broad program of free coverage had been instituted which covered loss from enemy attack in the United States and Territories of every possible species of property with the following exceptions :

(a) Whatever species of real property were not included within the meaning of "buildings" and "structures," e.g., a forest.

(b) Certain kinds of personal property, i.e., intangibles and objects of art, which had been expressly excepted in the press release.

(c) All property prior to the effective date of the press release.

We think it is a significant indication of the general purpose and intent of Congress that the statute eliminated *all* of these gaps in coverage. Under this statute *all* property, real and personal, situated in the United States and designated Territories was covered retroactively to December 7, 1941.

What Congress did in extending the scope of the protection assured speaks louder and more eloquently than words. The act which it adopted extended full coverage without distinction or exception based on the character of the property or the availability of insurance from other sources.

Congress also extended the protection of the statute into new ground by covering "property in transit." Defendant argues that the Congress, which was then in the process of expanding coverage in the United States and the Territories to its ultimate limit, intended to cover only cargoes and personal effects in transit and to exclude ships. No rational ground appears for the distinction. The policy and purpose of Congress is clear; and, in extending coverage to the "in transit" situation, Congress chose the same broad word, "property," by which it had extended complete coverage in the United States and the Territories.

There is no basis for contending that Congress used the term "property" in the "in transit" provision, intending a more restricted meaning than was intended when the same word was used with respect to property situated in the United States and the Territories.

C. THE DOMINANT PURPOSE OF THE STATUTE.

The record of what was said and done in the proceedings on this statute plainly establishes one basic principle. Loss from enemy attack was an incident to the common war effort and no individual should bear a disproportionate share of the war cost.

1. The Basic Purposes Indicated by Amendments Extending the Coverage.

Senate Bill 2198 was introduced on January 14, 1942 at the request of Mr. Jones, the Federal Loan Administrator. The original form of that bill would not have materially changed the program which had been set up under the press releases. The bill provided *only for the future* and provided for coverage on *tangible property situated in the United States and certain Territories,* on terms and conditions to be established by the defendant.

The bill passed through Congress in short order. Hearings were held before the Senate Committee on Banking and Currency on January 27, 28 and 29, and the bill was reported out of Committee with a proposed amendment in the nature of a substitute bill on February 2, 1942 (Senate Report No. 1012, 77th Cong., 2nd Sess.). On February 3, the bill was debated in the Senate and passed in the form reported (88 Cong. Rep. 955-968).

In the meantime, on February 2nd the House Committee on Banking and Currency opened hearings on a companion bill (H. R. 6382). As the Senate Committee had already reported out the Senate Bill with changes, the House Committee took up the Senate Bill as reported, and House Report 6382 was abandoned.

Hearings were held by the House Committee on Banking and Currency February 2, 3, 4, and 5. The bill was reported out with amendments on February 6 (House Report No. 1752, 77th Cong., 2d Sess.). On March 2, 1942 the bill was called up in the House, debated, amended and passed (88 Cong. Rec. 1843-1865).

The Conference Report on the disagreeing votes of the two Houses was adopted in the Senate (88 Cong. Rec. 2653-4) and the House (88 Cong. Rec. 2656-2661) in short order.

In the course of this brief passage through Congress extensions were made in the coverage of the bill which indicate clearly, we think, the basic intent of Congress to compensate all war damage without any distinctions. The significant changes in the course of passage may be summarized as follows:

(a) The provision which would have limited coverage to "tangible" property was abandoned by an amendment introduced during the debate in the House (88 Cong. Rec. 1859-1860). The only distinction which had ever been made as to the *kind* of property thus disappeared.

(b) The coverage of property situated in certain designated Territories was extended to include other areas which might be determined by the President to be under the dominion and control of the United States.

(c) Protection was extended to property in transit between any of the geographical areas which were covered in the bill. The precise meaning of this particular extension is, of course, the subject of this suit.

(d) An amendment which would have limited to $15,000 the coverage to be granted without premium (leaving excess to be covered by premiums) was adopted in the Senate Committee but later was rejected in the House.

(e) An amendment was adopted in the House Committee giving retroactive coverage without premium back to the date of the attack on Pearl Harbor.

(f) An amendment was adopted in the House debate to cover international bridges on the plea that all property should be covered without distinction (88 Cong. Rec. 1861).

The only changes indicating an intent to narrow the scope of coverage were the following:

(a) It was thought that damage in areas seized by the enemy, such as the Philippines, should be handled by a separate law and at Senator Taft's insistence an amendment was adopted by which it was intended to authorize the defendant to make territorial exceptions to the coverage (see Sen. Com. Hearings, pp. 31, 92, 94-5; Senate Committee Report, p. 3).

(b) An amendment drafted by Admiral Land was adopted in the House Committee which would have excluded from the "in transit" clause any property which the Maritime Commission was authorized to insure. This would, of course, have excluded both vessels and cargoes. In the conference, however, this limitation was amended and made applicable only to the coverage which would be provided in the future. It thus expressly recognized that during the retroactive period the bill covered property upon which the United States Maritime Commission was authorized to write insurance.

The bare fact that these changes extending coverage were made is convincing evidence that Congress intended to go the whole way in covering war damage without distinctions as to the kind of property or extrinsic matters such as the availability of insurance.

2. The Basic Purpose Is Further Emphasized by Statements Made in the Congressional Proceedings.

There never was any question about the basic purpose and philosophy of the Act. That purpose was forcefully stated in the report on the bill by the Senate Committee on Banking and Currency:

> "The necessity for some assurance of protection seems not subject to question. It appears to be proper that the

protection against such losses should be undertaken by the Government for the reason that such coverage, the extent and probability of losses being unpredictable, cannot satisfactorily be assumed by private insurance carriers. Also it seems appropriate for the Government itself to undertake the program because the cost of such protection—pertaining solely to catastrophic results arising from a common national cause—should be borne by the Nation at large just as the cost of a battleship or of a bomber would be, rather than that such cost should be borne by the comparative few who might be immediate victims. Coverage has been restricted to damage resulting from enemy action for the reason that only in this situation is the property owner without recourse and entirely unable effectively to protect his interests." (Senate Report No. 1012, 77th Cong. 2d Sess., p. 3)

Throughout all the proceedings in the committees and on the floor the underlying purpose never varied. It was the basis for the original press releases, which Mr. Jones described as covering everybody with a blanket policy (House Com. Hearings, p. 26; Sen. Com. Hearings, p. 8). Mr. Jones pointed out: "To us who have studied it, it seems very, very simple. If special war protection is to be provided it should be by way of government coverage." (Sen. Com. Hearings, p. 9). Mr. Jones recognized an obligation upon the government to make good such losses to property (Sen. Com. Hearings, p. 14).

Other committee members and Congressmen expressed the same view. Senator Maloney, a member of the Senate Committee and Floor Manager of the Bill, said:

> "I think that if there are bombings and there are great losses on either of the coasts all the people of the country should share the burden, and I think at this moment that the only way we can get a proper premium is by sharing the cost, and that it should come only through taxation." (Sen. Com. Hearings, pp. 16-17).

Mr. Patman, a member of the House Committee, said:

> "Mr. Jones, I am in accord with the view that since our Government has declared war on other countries, if any damage is caused by the public enemy it is a governmental responsibilty (House Com. Hearings, p. 47).

Mr. Smith, a Committee member, said:

> "I do not see upon what principle you can exempt any amount on this property in certain instances, whether it is for a temporary period or over a long period of time. It seems to me we should have that law simply covering losses *in toto*." (House Com. Hearings, p. 96).

Mr. Sacks, another Committee member, said:

> "I incline to the theory that the Government owes protection to its citizens against enemy action regardless of the amount." (House Com. Hearings, p. 51).

In the Senate debates, Senator Pepper said:

> "I cannot see anything wrong, I confess, with the principle that if the individual citizen loses his home or business because of a bombing attack as a part of the war in which the whole country is engaged the loss should not fall disproportionately upon him." (88 Cong. Rec. 960).

In the light of this basic philosophy, the frequent assertion that everybody was covered obviously should be taken to mean exactly what was said. Thus the Senate was advised by the Floor Manager of the Bill:

> "So far as I can see, it goes all the way in providing limited[9] protection against enemy attacks for the tangible property of Americans during this wartime period." (88 Cong. Rec. 958).

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9. The Bill then contained a $15,000 limitation and covered only tangible property.

And in the consideration of the bill in the House repeated statements are found to the effect that "all real property and tangible personal property would be protected" (88th Cong. Rec. 1846); that coverage would be given to "everybody on everything" (id., p. 1848); that "all should share the risk" (id., p. 1849); and stand the losses equally (id., p. 1851).

These statements and numerous others to like effect reveal the underlying principle that no individual should bear a disproportionate share of the war cost but rather that all of the people should share equitably in the losses sustained by any of them as the result of enemy action. The nation should and did undertake the burden of the individual's loss. All property owners shared in the benefit and all taxpayers shared in the burden. Such a principle does not permit a construction of the statute to exclude a particular kind of property. Such discrimination and inequity of treatment are entirely alien to the intent of Congress.

The defense in this suit, however, and as we understand it, the judgment of the trial court were predicated upon the theory that Congress intended to exclude a particular class of property.

Such a departure from the general purpose of the Congress will not readily be declared by a court unless the evidence of such intent is quite clear. That there is no such clear indication of an intent to exclude vessels or any other particular class of property we think is shown both by the above statements of intent and by the detailed discussion of the in transit provisions which follows.

D. PROCEEDINGS ON THE PROTECTION OF "SUCH PROPERTY IN TRANSIT" SHOW THAT CONGRESS INTENDED NO EXCLUSION OF SHIPS.

We turn now to the proceedings particularly related to the "in transit" clause. Defendant's argument and the trial judge's opinion relied on inferences drawn from these proceedings. The contention of defendant was based on two considerations:

First, the "in transit" extension was adopted at the urging of Delegates King and Dimond of Hawaii and Alaska, respectively. These gentlemen are said to have been concerned only with water-borne cargo. From this it was claimed that the broad language appearing in the statute should be restricted to exclude vessels.

Second, there was strong opposition in the Committee hearings to any extension of coverage which would overlap the Maritime Commission's authority to write war risk insurance on both cargoes and vessels. Although defendant conceded duplication with respect to cargoes (357), it was claimed that this opposition requires a narrow interpretation of the "in transit" clause which reinforces the first argument and makes reasonable the supposed intent to exclude vessels.

1. Proceedings in the Senate Committee.

(a) TESTIMONY OF DELEGATES KING AND DIMOND.

Mr. King, the Delegate from Hawaii, testified briefly before the Committee (Sen. Com. Hearings, pp. 25-31), and presented a written statement requesting three amendments. In that statement he pointed out that "personal property" was covered during its transfer between points in the continental United States but not in a transfer to the Territories. The statement also squarely raised the question of policy about whether protection should be given by this law or through some other agency and concluded:

> "In any case personal property in transit should not lose the protection extended to such property both at its point of origin and at its destination.
>
> "I ask your support, therefore, of the amendments I propose to offer to the pending legislation which will extend its benefits to intangible as well as tangible property and *all forms of property while in transit.*" (Sen. Com. Hearings, p. 27)

And in his oral request for amendment Mr. King used the same language:

> "So, I should like to ask the committee to consider making the bill effective as of the calendar date December 7 to include coverage for *all forms of property in transit* * * *" id., p. 26)

At several points in his explanation of the necessity of "in transit" coverage Mr. King referred to "goods" in transit and emphasized the dependence of Hawaii upon water-borne goods and commodities. He also said that cargo insurance rates had jumped and that the Maritime Commission had not yet exercised its authority to provide war risk insurance on cargoes. He did not know whether they had done so with respect to vessels (id., p. 31).

Mr. King was followed by Mr. Dimond, the delegate from Alaska (Sen. Com. Hearings, pp. 31-35). Mr. Dimond explained Alaska's dependence upon water transportation and endorsed Mr. King's requests. He added that the Maritime Commission had not yet acted to make war risk insurance available with respect to Alaska because commercial rates were not considered too high. Like Mr. King, he referred in his argument to "goods," "products," and "property" in the course of transportation. His formal request for amendment was:

> "What I ask for with respect to Alaska is that we be accorded in the Territory, and necessarily on the high seas when en route between the Territory and the States, for our property the same protection that is given to the people of the states when their property is in course of transportation from one state to another." (Sen. Com. Hearings, p. 33)

And again he said:

> "Whatever products are protected under this insurance policy in the states and in the territories should be protected just as much on the high seas between the states

and the territories, whether it is petroleum products, or salmon, or sugar and pineapple which are produced in Mr. King's territory, or *what not.*" (id., p. 33)

The trial judge in his opinion summed up the testimony of Messrs. King and Dimond by saying that each urged amendment to protect *goods* in transit (68). As we have noted, their proposals were stated in more inclusive language.

Defendant argued, and the District Court agreed, that the delegates were concerned about cargoes and that the amendment later offered by Senator Clark should be restricted to exclude vessels.

We think the inference is unjustified. It is doubtless true that the delegates were deeply concerned about movement of goods and commodities by water. The ship is just as essential to the movement as the cargo. That was made clear by Mr. Dimond's testimony that freight rates, as well as cargo insurance rates, had jumped because of the increased risk.

Both delegates referred to the discrimination arising out of the protection given to property moving between two states but denied to a similar movement between a territory and a state. We respectfully suggest that the delegates would have been quick to deny that they proposed a discrimination between the ship and its cargo.

Indeed, Mr. King pointed out that since property was insured at the point of origin and also the point of destination, it was unreasonable to have a "haitus" in coverage during the dangerous movement. The reasoning applies equally to the vessel and its cargo.

Certainly it is clear that there was no indication of any desire to exclude vessels. The formal proposals made by the delegates, and the reasons for them, would include vessels as well as other property. The only basis for a narrower construction is the inference that since, in their discussion, they dwelt on water-borne goods and commodities they really had in mind such cargoes only.

Such an argument proves too much. It also proves that "property in transit" refers only to *water-borne* cargo. But Senator Clark did not so understand. Commenting on Mr. Dimond's formal proposal, he said:

> "You get into a very peculiar situation there unless you do afford this extended protection to goods in transit either by *airplane* or by steamship." (Sen. Com. Hearings, p. 33)

Such reasoning also would limit the meaning of "property in transit" to cargoes. But when Senator Maloney, the Floor Manager for the bill, presented it to the Senate he pointed out that it "also provides for coverage of the personal effects of people travelling on such vessels" (88 Cong. Rec. 958). Seeking, apparently, to make a virtue out of necessity, defendant explained this embarrassing deviation from its present contention by arguing that the word property was used instead of cargo because that word was broader and would cover baggage and personal effects.

We find no appeal for coverage of these items. They were ignored by the delegates along with vessels. If "property in transit" means something more than the sort of goods particularly referred to by the delegates, and defendant asserted that it does, then how can the line be drawn at vessels?

(b) THE CLARK AMENDMENT.

Whatever the desires of the territorial delegates may have been, the fact is that Senator Clark of Idaho proposed a committee amendment to the Senate Bill, incorporating the provision about which this suit revolves (Sen. Com. Hearings, p. 73). After commenting on the limitation of the protection under the Bill to property situated in the United States, he proposed an amendment to insert the words *"or in transit between"* so that the pertinent portion of the Bill then would have read:

> "Such protection shall be limited to property situated in

OR IN TRANSIT BETWEEN the United States, including the several states, etc."

The provision in that form leaves no shadow of doubt that the property to be insured when in transit between the United States and its territories and possessions was the identical property to be insured within the United States. The word "property," being used in the provision only once, can have one meaning only; it must be conceded that that meaning in the United States included all forms of property, specifically ships as well as other carriers; and it must, therefore, have the identical meaning elsewhere than in the United States. Certainly no inference of a changed intent can be drawn from the fact that the form of the statute later was recast, without explanation into its present form which, alone makes possible the argument that "property" in transit means something different than "property" in the United States.

It cannot be assumed that Senator Clark or the other members of the Committee were unfamiliar with the language or its proper use. It would have been perfectly simple, had Senator Clark or the Committee so intended, to have restricted the scope of coverage to cargoes or goods or merchandise when in transit outside of the limits of the United States or its Territories; instead, the Senator and the Committee used the broader term property, thus rejecting the narrower terms.

It will be noted, also, that the intent of the Senator and the Committee was to give to the War Damage Corporation the broadest possible latitude, so that to use the words of Senator Clark "that would merely remove the limitation, so that you could go into this question of *shipping*." (Sen. Com. Hearings, p. 73).

With respect to defendant's contentions about the opposition to overlapping the Maritime Commission, it should be noted that the Senate Committee was under no misapprehension about what it was doing in adopting the Clark amendment. Im-

mediately following Senator Clark's proposal of the amendment, the following exchange took place:

> "Senator Maloney: Are you certain under existing law the Maritime Commission is permitted to insure cargoes?
>
> "Mr. Jones: That is my understanding. At all events, I think it should be done." (Sen. Com. Hearings, p. 73)

Later in the hearings Senator Brown again raised the question of duplication.

> "Senator Brown: * * * You are satisfied that you should not touch maritime insurance at all in this bill?
>
> "Mr. Jones: No; I am not. I think we should have the authority to cover these things in transit between Alaska and Hawaii and the mainland in cooperation with the Maritime Commission.
>
> "Senator Maloney: You have that authority with the adoption of the Clark amendment.
>
> "Senator Brown: I did not know about the Clark amendment.
>
> "Senator Maloney: It has not been adopted, but it was informally accepted, I think * * *" (id., pp. 96-97)

> "Senator Brown: I think there should be coordination between you people in that respect, so that we do not authorize two agencies to do the same thing.
>
> "Mr. Jones: We do not want to do that, and we do not propose to give anybody insurance who can buy insurance anywhere else. If it is available to them, let them go get it.
>
> "Senator Maloney: *I would like to say, Senator Brown, that I think the proposal made here would create some duplication.*" (id., p. 98)

Senator Brown, at least, seems to have assumed that the "in transit" problem covered damage to *ships,* for he replied to Senator Maloney:

> "It seems to me that we are getting into that position, but I have thought all along that there are two kinds of

risks that are involved—the ordinary risk of damage by storm, collision, and so on and so forth, and then the risks that are due entirely to enemy action. It is not always easy to draw the distinction. As I said last Monday, these *sinkings* that have occurred off Norfolk or off Cape Hatteras by the German submarines are clearly the result of enemy action. But then we had an accident out there in which *two ships collided. One of them sunk* and the *other was badly damaged,* due to the fact that under Government direction they were running without lights. Could that risk be provided against by ordinary insurance? I doubt it." (id., p. 98)

The Senator clearly had in mind the damage to the *ship* in the above remark. Mr. Hamilton, general counsel for the R.F.C. and Mr. Jones' aide throughout the hearing, must have thought ships were involved because he referred to vessels as well as cargo in the following:

"Senator Brown: It seems to me that Mr. Hamilton should consult with the Maritime Commission and be sure that they do not cover the same subject matter.

"Mr. Hamilton: They do, Senator. I can answer that question now. They are writing insurance on *American bottoms* and on cargoes carried in American ships, using that $40,000,000 fund. They have been writing it *only about a month,* I believe." (id., p. 98)

"Senator Taft: The bill is broad enough to cover *marine insurance,* unless we do something else about it.

"Mr. Hamilton: Not without the Clark amendment, Senator, because the authority is limited to property situated in the United States." (id., p. 98)

Senator Brown, again, was concerned with the insurance of vessels in the following exchange:

"Senator Brown: I would like to see you do the *whole job* instead of having the Maritime Commission get into it, too.

"Mr. Jones: My thought about that is not to take their place, but if anybody wants this insurance, let him come and ask us for it, and let him pay for it, unless the Maritime Commission can take care of it."

* * * * *

"Senator Brown: Well, it just seems to me that you are going to have duplication of inspectors, surveyors, and so on, and so forth. You will be inspecting *hulls,* and so forth, and the Maritime Commission will also be doing it." (id., p. 99)

The preceding material indicates that duplication was not considered desirable. But it must be remembered that at this stage the bill was purely prospective in operation. Mr. Jones' testimony in the last quotation thus indicates that although *authority* to duplicate was being given, it was intended that insurance would only be issued when the Maritime Commission did not make war risk insurance available. It is evident that the Committee members fully understood that adoption of the Clark amendment would result in duplication of authority both as to vessels and cargoes. Since the Clark amendment was adopted a few minutes later (id., p. 100) it is evident that the Committee deliberately chose to authorize duplication.

And so, to summarize the then condition of the Bill, the Clark amendment had removed all limits with respect to the authority of the corporation to issue war risk insurance with respect to property located in or passing between the United States and its territories and possessions; with the understanding that the corporation would not issue policies of insurance or afford protection either to ships or cargoes where it was obtainable from the Maritime Commission.

That situation reinforces the plain meaning of Section 5g, that property "in transit" included all property, whether cargoes, ships or whatnot, passing between the United States and the specified territories and possessions.

2. Proceedings on the Floor of the Senate Show There Was No Intention to Exclude Vessels.

Counsel for the defendant pointed to only one quotation in the proceedings before the Senate, and the Court adopted that single statement, in support of claim that only cargo of the vessel and not the vessel itself constituted property in transit. The reference is to a statement by Senator Maloney as follows:

> "It made provision in the language of the bill for the War Damage Corporation to afford protection to the cargoes of vessels traveling between the United States and our Territories and other places. That not only means that the cargo of the vessel itself could be insured—and I may say parenthetically that the Maritime Commission has certain moneys and authority under existing law to provide like coverage—but it also provides for coverage of the personal effects of people traveling on such vessels." (88 Cong. Rec. 958)

It is respectfully submitted that Senator Maloney was not undertaking to define the full scope and application of the bill when he said that the cargo of the vessel could be insured and also the personal effects of people traveling. On the contrary, he generalized by stating immediately thereafter

> "So far as I can see, it goes all of the way in providing limited protection against enemy attacks for the tangible property of Americans during this wartime period."

And his reference to cargoes and personal effects were merely examples of that application; for, concededly, the "in transit" clause applied equally to personal property carried by plane or other modes of transportation, and yet Senator Maloney did not mention it. In like manner, Senator Maloney followed the quotation relied upon by a statement, "the Bill authorizes the War Damage Corporation to cover crops in the field." It will not be claimed, we assume, that the protection of the Act was limited to crops in the field.

Nowhere in the presentation of the bill or in the debates on the floor of the Senate was the suggestion ever advanced that vessels, planes or other carriers should be the one class of property excluded from the protection afforded by the law. Nowhere in those debates or discussions is it suggested that the word "property" should be treated as having one meaning within the territorial limits specified, and another when passing between them.

And so, it is submitted that in all of the proceedings up to the moment when the Senate Bill passed to the House, there was complete adherence to the policy set forth in the Senate report that the cost of the protection afforded should be borne by the nation at large, rather than the comparative few who were the immediate victims.

That policy is clearly as applicable to the carrying vessels as to the cargo or personal effects carried therein, the language of the statute covers it, and no single suggestion of its exclusion can be found in the proceedings.

3. The Proceedings in the House Committee Show That It Considered the Phrase "Property in Transit" to Include Ships.

Mr. Jones substantially repeated what he had said in the Senate hearing. We would not dwell on this but for the fact that the District Court stated in the opinion (71) that Mr. Jones here expressed the opinion that goods in transit would be insured but not the vessel. This was a misunderstanding of Mr. Jones' testimony as can readily be demonstrated.

Mr. Williams asked the question:

> "It would not cover the vessel itself, would it—or would it?
>
> "Mr. Jones: I do not think so; no. We would insure the merchandise in the vessel." (House Com. Hearing, pp. 21-22.)

The true meaning of the question and answer was that *foreign* vessels would not be insured. This is readily demon-

strated when read in the context. Mr. Williams had just asked a series of questions about foreign nationals and the immediately preceding question was:

> "Well, would this cover insurance of goods in foreign vessels?
>
> "Mr. Jones: Yes; it could, because a good many of those vessels are foreign vessels, but they are friendly foreign vessels." (id., p. 21)

The very fact that a committee member thought it worth while to inquire whether *foreign vessels* were to be covered indicates plainly enough that it could not have been understood that *American vessels* were excluded.

There was also placed in the record a statement by W. R. Boyd, of the American Petroleum Institute, pleading that coverage be given to oil tankers (id., p. 58).

The question of duplication between the Maritime Commission and War Damage Corporation was raised again and resulted in an amendment offered by Mr. Lynch, which was adopted without objection (id., p. 43).

The amendment would have added the bracketed words:

> "(2) [When adequate work (war) risk insurance at reasonable rates is not available in the private insurance market or with the United States Maritime Commission] to such property in transit * * *"

Later in the proceedings an amendment suggested by Admiral Land, of the Maritime Commission, was substituted for the Lynch amendment (id., pp. 88, 93). With that change the limitation took the form of a proviso:

> "That such protection shall not be extended to property in transit upon which the United States Maritime Commission is authorized to provide marine war risk insurance." (id., p. 93)

This amendment, carved out of the authority of the War Damage Corporation, to provide war risk protection for prop-

erty in transit, American ships, the cargoes carried therein, and the personal effects of those aboard because the Maritime Commission was authorized to provide war risk insurance on all of these.

While in the House Committee the bill was also amended so as to extend protection to losses from enemy attack, which "may have heretofore resulted." The purpose of that amendment, as the trial court correctly stated in its opinion, was to the end that *all* persons without war risk insurance for *past* losses would be protected until the Government insurance plan was worked out. And thus the bill was extended to provide protection without premium for the period from December 7, 1941 to a date determined by the Federal Loan Administrator, but in no event later than July 1, 1942.

In addition, it should be noted that the House Committee deleted the $15,000 limitation which had been added in the Senate Committee.

4. In the Proceedings on the Floor of the House Repeated and Explicit Statements Show That the Term "Property in Transit" Included Ships.

Mr. Steagall, Chairman of the House Committee, undertook to present the bill to the House. Early in the debate, the following exchange took place (88 Cong. Rec. 1847):

> "Mr. White: Does this War Insurance Corporation apply to cargoes and *ships* on the high seas?
>
> "Mr. Steagall: *Yes;* under certain conditions.
>
> "Mr. White: Then the Government is taking a direct loss in all of the torpedoings of cargoes and oil tankers and things like that under the operation of this act?
>
> "Mr. Steagall: I yield to the gentleman from Virginia [Mr. Bland], who will make the explanation that I was going to make to the gentleman.
>
> "Mr. Bland: Things like that are being taken care of under the war-insurance bill, which was extended today. I have just put into the basket a report on the amendment

to that bill, which covered every phase of the marine liability and risk.

"Mr. Steagall: The gentleman from Virginia has stated the situation correctly, but this bill provides that kind of insurance only where the Maritime Commission is not authorized by law to render that service. There would be no conflict. The Corporation would only come in when the Maritime Commission could not render the service.

"Mr. Bland: In other words, *if there should be a case which is not covered by the maritime-insurance legislation, then this takes care of that.*

"Mr. Steagall: *That is quite correct.*

"Mr. Bland: Although we do not conceive just what it will be; but it takes care of it.

"Mr. Steagall: That is quite correct."

It was the understanding of both Mr. Bland and Mr. Steagall that the bill in the form in which it then appeared accorded to the War Damage Corporation full and complete authority to insure all ships and cargoes to the fullest possible extent, so that if at any point the authority conferred on the Maritime Commission was insufficient to permit it to provide the necessary protection, then the War Damage Corporation itself could do so. It follows, then, that subject to the proviso adopted by the House Committee, the War Damage Corporation had full and complete authority to insure vessels as well as cargoes; and the members of the House of Representatives so understood.

Mr. Steagall stated at the very inception of his comments, that:

"all real property and tangible personal property would be protected under the provisions of the Bill and the law would be retroactive to cover all such damages as have occurred since the 7th day of December." (88 Cong. Rec. 1846)

In making that statement, Mr. Steagall indicated no exception whatever to the broad and all-inclusive protection guaranteed. No suggestion was made that of all forms of property, only vessels were excepted.

Mr. Ploeser pertinently asked the Chairman of the Committee

> "Was it the intention of the Committee to go from a blanket form of insurance, in which every citizen owning property was provided in unlimited amount up until now, as I understand it, to an actual contract of normal insurance business for war risk?"

and Mr. Steagall replied

> "That is correct. The gentlemen will understand that we could not go back and contract when people suffered damages such as the people of Hawaii on the 7th of December. That is behind us, and nothing can be done about it, except what we can do retroactively." (id., 1847)

Is it conceivable that the Chairman could assure the House that a blanket form of insurance was provided for every citizen owning property if, in fact, those owning vessels were alone unprotected? Can there be any doubt that it was the intent to cover every form of property without exception, when in response to a question by Mr. Cox concerning the extent of the protection to property owners the Committee Chairman answered:

> "To everybody on everything if the plan decided upon goes into effect, up to the time the permanent plan becomes operative." (id., 1848)

Understanding of the House members was plainly indicated by Mr. Ploeser in another remark, after he had reviewed the history of the bill, saying:

> "The Senate version of the plan went so far as to cover *all properties in transit,* which included *any* marine risk, ocean-going marine risks, as well." (id., 1849)

Mr. Steagall's explanation, as Committee Chairman and Floor Manager, is of course entitled to particular weight since it is upon such statements that Congress acts. *United States v. Wrightwood Dairy Co.,* 315 U.S. 110, 125, 86 L.Ed. 726, 62 S.Ct. 525. In *United States v. St. Paul, M. & M. Ry. Co.,* 247 U.S. 310, 62 L.Ed. 1130, 38 S.Ct. 525, the court reasserted the rule against use of debates, but pointed out a distinction:

> "But the reports of a committee * * * and *statements made by the committee chairman in charge of it, stand upon a different footing* and may be resorted to under proper qualifications." (p. 318)

5. The Proceedings in the House After Amendment of the Bill in Conference Show That the Bill as Finally Adopted Extended Full Protection to Ships as Well as Other Property During the Free Period.

In the conference on the disagreeing votes of the Houses, a significant change was made. The House proviso which would have excluded any property on which the Maritime Commission was authorized to write war risk insurance was modified to become effective only after the new program for the future was established.

The retroactive coverage was thus freed of the limitation.

Mr. Steagall's explanation of the present status of the bill, after the conference report, is thus highly significant. We have pointed out that before the modification of the House proviso he had explained that cargoes and ships were covered except as limited by that proviso. Now he stated the coverage without qualification.

Mr. Smith of Ohio, a member of the House Committee, but not chosen as one of the Managers on the part of the House to represent it at the Conference hearing, asked Mr. Steagall the following question:

> "Under the temporary arrangement until the contracts are written, say July 1, are the *sinkings* that are taking place at the present time covered by the temporary arrangement?"

Mr. Steagall answered "yes," whereupon Mr. Smith said: "This takes care of the property alone?", to which Mr. Steagall replied, "*The property entirely.*" (88 Cong. Rec. 2658).

Defendant, as usual, suggested that the word "sinkings" had a special meaning for the purpose of the act and referred only to cargoes.

A little later in the debate Mr. Smith again raised the same question, as follows:

> "The question was raised seriously in the committee as to whether it might not be advisable to provide for the payment of premiums on property which might be lost up to the time of the writing of insurance contracts. At that time we were not thinking of any damage except that which occurred at Pearl Harbor. The committee for some reason took no action on requiring such premium payments. Since that time we have had an *immense amount of sinkings.* I would like to have an expression from the gentleman from Alabama as to whether we may not have made a mistake in not providing for premium payments on property which might be destroyed up to the time when actual contracts can be written."

Mr. Steagall replied:

> "Of course, that is a matter that is past. What the conference report does is to embody the House provision in that respect, so that the matter is closed." (id., pp. 2660, 2661)

The entire legislative history demonstrates that the intent of the property in transit amendment to the bill was to extend protection to any and all property passing between the United States and its possessions and territories; and nowhere in the course of the subsequent legislative proceedings is there indicated any desire to restrict or revoke that protection. No comment of any witness or of any Congressman or Senator indicated a desire to deprive the owners of vessels of the protection given by the Act to all other property owners.

On the contrary, unequivocal statements were made not only by Senators and Congressmen from the floor, but by those in charge of the presentation of the bill to the House of Representatives, clearly indicating the understanding and intent that vessels were consciously and intentionally included within the terms of the bill.

IV. The District Court Ignored Settled Principles of Interpretation and Reached an Irrational and Discriminatory Result

A. THE DISTRICT COURT'S INTERPRETATION IS INCONSISTENT WITH ADMITTED FACTS.

The trial judge's opinion suggests that the "property in transit" clause covers *cargoes not insurable by the Maritime Commission and nothing else.*

The concluding sentences of his opinion state:

> "The defendant corporation was never proposed to have anything to do with the sea. This was in the field of the Maritime Commission. The defendant only 'put to sea' because of the needs of Hawaii and Alaska—to enable these territories to receive the goods needed to carry on during the stress of the great emergency and only to the extent of protecting cargoes en route either way not insurable by the Maritime Commission. Ships were otherwise covered." (77)

The same narrow interpretation is indicated in other passages of the opinion.[10]

That interpretation cannot stand, for admittedly cargoes were protected throughout the free period, although they were insurable by the Maritime Commission. It is refuted by the admitted fact that things other than cargoes were protected, i.e., baggage and personal effects. Congress itself, after adopting a proviso to exclude all property which the Commission was authorized

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10. See the discussion commencing at the bottom of pages 69-70 and 75-76.

to insure, expressly amended the bill to remove that limitation upon the protection afforded in the free period. To adopt the court's construction would revive the very proviso which Congress deleted. The court's opinion ignores the overwhelming evidence that the "in transit" clause was adopted with the clear understanding that it would result in a duplication between defendant and the Maritime Commission. And, finally, it would nullify the "in transit" clause because *all* cargoes between the United States and Hawaii or Alaska were insurable by the Maritime Commission.

We believe that the basic error of the Court lies in the fact that it abandoned the fundamental rule of interpretation which chooses the plain meaning of words and sought to fix the meaning of the statute by inferences drawn from legislative proceedings.

B. THE DISTRICT COURT IGNORED SETTLED PRINCIPLES OF INTERPRETATION.

The opinion barely mentions the statute. There is no comment about whether the plain words of the Act cover vessels or not. There is no comment about whether the literal meaning of the Act is in accord, or in conflict, with the general purposes of the statute. Indeed, the express words were disregarded and the Court interpreted the law solely on the basis of inferences which it drew from the legislative proceedings. We think it is settled law that the interpretation of statutes is not to be approached in such a manner.

The trial judge laid great stress in his opinion upon discussion for the need of protection for water-borne cargoes in connection with the adoption of "in transit" clause. While we do not agree that that discussion pointed to the protection of cargoes only, even if we assume that the protection of water-borne cargoes constituted the chief purpose of this provision, the comprehensive language used in the Act cannot be restricted to the protection of cargoes alone. If a particular application of

a statute is fairly within the meaning of its language, the court will not refuse to apply it to a case, merely because it is one not specifically referred to in the deliberations of Congress.[11]

In *Canadian Aviator Ltd. v. United States,* 324 U.S. 215, 89 L.Ed. 901, 65 S.Ct. 639, a statute waived sovereign immunity in suits "for damages caused by a public vessel." In holding that the statute, despite the rule of strict construction applicable to such a waiver, was not confined to collision, the court said:

> "The fact that the Committee reports on the bill state that the '*chief purpose*' of the Act is to authorize recovery in collision cases, that the departmental letters attached to the report consider principally the 'collision' situation, does not require that the statute should be so limited." (p. 225)

And in *Jewell Ridge Coal Corp. v. Local No. 6167,* 325 U.S. 161, 89 L.Ed. 1534, 65 S.Ct. 1063, it was held that a bona fide collective bargaining agreement did not exclude application of the Fair Labor Standards Act:

> "Statements in the legislative history to the effect that the Act was *aimed primarily* at overworked and underpaid workers and that the Act did not attempt to interfere with bona fide collective bargaining agreements are indecisive of the issue in the present case. Such general remarks, when read fairly and in light of their true context, were obviously not made with this narrow issue in mind and they cannot be said to demonstrate a Congressional desire to allow the coal industry to use private customs and agreements as an excuse for failure to compute the workweek as contemplated by § 7(a)." (pp. 168, 169)

Plainly, Congress did not confine the protection to cargoes, the principal subject of discussion, for it will be conceded that the law equally applies to baggage and personal effects which were never discussed.

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11. See discussion at pages 18 to 21, supra.

C. THE DISTRICT COURT WAS MISLED BY DEMONSTRABLE ERRORS.

The opinion of the trial judge consists principally of a review of the proceedings in Congress preceding the adoption of Section 5g of the Reconstruction Finance Corporation Act. We believe that he misconstrued the meaning and effect of those proceedings and the statements made in the course thereof, principally because of an error of both law and fact, on which the opinion is principally predicated.

The trial judge indulged in the erroneous assumption that shippers of cargo between the mainland of the United States and the territories of Hawaii and Alaska could not determine in advance whether their cargoes would be carried on American or foreign vessels.

On that subject the court said (page 69):

> "The Maritime Commission by such Act was empowered to issue such insurance only on American vessels and their cargoes. Since shippers of cargo could not determine in advance the type of vessel in which the same would be transported, the practical result was that while insurance on American hulls could be and was made available by the Maritime Commission under the Act cargoes, except in a very limited way were unprotected."

This assumption of the court was clearly in error. For many years the navigaiton laws of the United States have prohibited the carriage of cargo between ports of the United States and its territories in foreign bottoms and has confined these trades to American vessels (46 U.S.C. Sections 883, 877). At the time that the law was under consideration, all goods en route between the United States and Hawaii and Alaska were necessarily to be carried in American vessels. Indeed, that law applied to trade with all of the territories and possessions, except the Philippines, and there was no trade at that time with the Philippines. Obviously, then, no American shipper in the domestic trades was in any doubt concerning the fact that his

cargo would be carried on American vessels and that the United States Maritime Commission was empowered by law to insure it.

This misunderstanding by the court accounts for its misinterpretation of the testimony given before the Senate and House Committees and the statements on the floors of both Houses. For the court evidently assumed that the situation which faced Congress with reference to cargoes when the Bill was under consideration was essentially different from the situation confronting it concerning ships, when in fact no such difference existed.

D. AN INTERPRETATION OF THE ACT TO EXCLUDE VESSELS IS IRRATIONAL AND DISCRIMINATORY.

To construe the Act as one excluding ships from the protection extended to property in transit during the free protection period would impart to the law the effect of senseless distinction and unreasonable and irrational discrimination.

Did the trial court adopt the view that the phrase "such property in transit" embraces cargo exclusively and excludes all vehicles of transportation? What imaginable distinction exists between the carrier and the cargo as objections of protection? What reason could there be to protect property carried by plane, truck, or rail, even by ship, while protection is refused to the property devoted to carrying the cargo?

And if instruments of transportation are not "property" when that word is used in conjunction with "transit," then Congress gave protection to carriers as property in the territorial limits of the United States and captiously excluded the same carriers from the protection granted other property while in transit. Such irrational results will not readily be imputed to the Congress.

Or, did the trial court adopt a theory that "such property in transit" included all property, cargo, personal effects and the vehicles of their carriage, including planes, trucks, and rail facilities and excluded *ships* only?

It is submitted that the language used does not permit of that construction. But certain remarks of the trial court suggest it. Plainly, if Congress had that intent, it needed only to add the two words "except ships" and it refrained from so doing. But were that the meaning of the Act, what rational basis could exist for protecting the ships in port and refusing them protection at sea? The availability of insurance from the United States Maritime Commission while at sea would not be the justification; for the Commission's power to insure was the same in port as at sea. What reason can be assigned for excluding ships from the protection afforded its own cargo when the authority of the Commission to insure either cargo or ships was the same? In fact, at the time the Lahaina was lost, cargoes and ships were in the identical situation because the Maritime Commission had not exercised its authority to make it available to either.

The judgment of the trial court is predicated upon the insertion in Section 5g of the Act of an exception which cannot be found in the law itself. Its decision necessarily rests upon an interpretation creating distinctions which are unsubstantial and unreal and which produce arbitrary results and create inequalities. Assuming that the law were so obscure in meaning so as to justify resort to rules of interpretation, no interpretation will be accepted which leads to such results (50 Am. Jur. 380).

It is respectfully submitted that the Congress never intended the exclusions implied in the decision of the trial court; it is submitted that the purpose of the Act was to establish free protection during the free period for all losses sustained by property owners as the result of enemy attack without distinction or discrimination; that that protection was at the expense of the taxpayers of the United States and for the benefit of all property owners as a war measure to allay the apprehension arising out of the fear of enemy attack, and thus promote and increase production and maintain public confidence. The plain

meaning of the law can be followed and the policy of Congress fulfilled only by applying the protection of the Act to all property, real and personal, including ships whether in movement or at sea.

Numerous affirmative defenses and contentions were advanced by defendant in the trial court. All of them were ignored by the trial judge; and we cannot anticipate which, if any of them, defendant may raise to sustain the judgment. Plaintiff will answer in its reply brief any of such defenses or contentions which defendant may assert in this court.

Dated: August 16, 1948.

Respectfully submitted,

HERMAN PHLEGER,
GREGORY A. HARRISON,
BAILEY LANG,
111 Sutter Street,
San Francisco 4, Calif.,

LYMAN HENRY,
KENT SAWYER,
Balfour Building,
San Francisco 4, Calif.,

Attorneys for Appellant.

BROBECK, PHLEGER & HARRISON,
111 Sutter Street,
San Francisco 4, Calif.,

HALL, HENRY & OLIVER,
Balfour Building,
San Francisco 4, Calif.,

Of Counsel.

(Appendix A Follows)

§ 606b—2. *Funds for War Damage Corporation; insurance against property injury by enemy attack*

(a) The Reconstruction Finance Corporation is hereby directed to continue to supply funds to the War Damage Corporation, a corporation created pursuant to section 606b and 609j of this title; and the amount of notes, bonds, debentures, and other such obligations which the Reconstruction Finance Corporation is authorized to issue and to have outstanding at any one time under existing law is hereby increased by an amount sufficient to carry out the provisions of this subsection. Such funds shall be supplied only upon the request of the Secretary of Commerce, with the approval of the President, and the aggregate amount of the funds so supplied shall not exceed $1,000,000,000. The Reconstruction Finance Corporation is authorized to and shall empower the War Damage Corporation to use its funds to provide, through insurance, reinsurance, or otherwise, reasonable protection against loss of or damage to property, real and personal, which may result from enemy attack (including any action taken by the military, naval, or air forces of the United States in resisting enemy attack), with such general exceptions as the War Damage Corporation, with the approval of the Secretary of Commerce, may deem advisable. Such protection shall be made available through the War Damage Corporation on and after a date to be determined and published by the Secretary of Commerce which shall not be later than July 1, 1942, upon the payment of such premium or other charge, and subject to such terms and conditions, as the War Damage Corporation, with the approval of the Secretary of Commerce, may establish, but, in view of the national interest involved, the War Damage Corporation shall from time to time establish uniform rates for each type of property with re-

spect to which such protection is made available, and, in order to establish a basis for such rates; such Corporation shall estimate the average risk of loss on all property of such type in the United States. Such protection shall be applicable only (1) to such property situated in the United States (including the several States and the District of Columbia), the Philippine Islands, the Canal Zone, the Territories and possessions of the United States, and in such other places as may be determined by the President to be under the dominion and control of the United States, (2) to such property in transit between any points located in any of the foregoing, and (3) to all bridges between the United States and Canada and between the United States and Mexico: *Provided,* That such protection shall not be applicable after the date determined by the Secretary of Commerce under this subsection to property in transit upon which the United States Maritime Commission is authorized to provide marine war-risk insurance. The War Damage Corporation, with the approval of the Secretary of Commerce, may suspend, restrict, or otherwise limit such protection in any area to the extent that it may determine to be necessary or advisable in consideration of the loss of control over such area by the United States making it impossible or impracticable to provide such protection in such area.

(b) Subject to the authorizations and limitations prescribed in subsection (a), any loss or damage to any such property sustained subsequent to December 6, 1941, and prior to the date determined by the Secretary of Commerce under subsection (a), may be compensated by the War Damage Corporation without requiring a contract of insurance or the payment of premium or other charge, and such loss or damage may be adjusted as if a policy covering such property was in fact in force at the time of such loss or damage. Jan. 22, 1932, c. 8, § 5g, as added Mar. 27, 1942, c. 198, § 2, 56 Stat. 175.